



# COMMONWEALTH of VIRGINIA

*Department of Taxation*

September 23, 2010

**TO:** Craig M. Burns  
Acting Tax Commissioner

**THROUGH:** William J. White  
Assistant Commissioner

**FROM:** Mark Haskins  
Policy Development

**SUBJECT:** Disclosing Tax Information to Department of Aviation

## Background

When an aircraft has been physically present in Virginia for 60 days or more Virginia law requires the aircraft to be licensed. Under the Virginia aircraft sales and use tax law an aircraft is subject to tax if it is required to be licensed. The Department of Aviation has, by regulation, required proof that the tax has been paid before it will license an aircraft.

For many years an employee routinely gave the Department of Aviation ("Aviation") copies of our payment confirmation letters. Those letters included a lot of taxpayer information, such as the taxpayer's SSN or FEIN, name, address, etc. When another employee took over the duties upon the first employee's retirement, a spreadsheet was developed that disclosed only information deemed necessary for Aviation, i.e., the taxpayer's name, payment date and the plane's tail number and serial number. This spreadsheet was supplied monthly in lieu of the copies of the payment letters. In July TAX's disclosure officer, Don Staples, was asked if providing Aviation with the spreadsheet was authorized under the law and Don said that he could find no authority for it. No information has been provided to Aviation since then.

## Relevant Laws and Regulations

Secrecy: Va. Code § 58.1-3 makes tax information confidential, but provides an exception for: "Acts performed or words spoken or published in the line of duty under the law."

Tax imposed: *Va. Code* § 58.1-1502 levies a tax on the sale or use in Virginia of any aircraft required to be licensed.

Aircraft licensure:

- *Va. Code* § 5.1-5 requires a license when an aircraft is physically present in Virginia for 60 days or more within 12 months.
- Aviation regulation 24 VAC 5-20-20 provides: "Except as provided below, the tax on the sale or use of an aircraft required to be licensed by this Commonwealth shall be paid by the purchaser or user of such aircraft and collected by the Virginia Tax Commissioner prior to the time the owner applies to the Department of Aviation for, and obtains, such license."

### Line of Duty Exception

There is no clear language within Virginia law that grants specific authority for TAX to share taxpayer information with Aviation. The issue is whether the exception for acts performed in the line of duty permits disclosure to Aviation. In this case both Aviation and TAX have duties with respect to the tax. Since the issue is whether an employee of TAX is authorized to disclose information, the application of the line of duty exception has to be tied to a duty imposed on TAX by law. That duty is obviously the assessment and collection of sales and use tax on aircraft.

The fact that Aviation has a duty to ensure that the tax is paid may authorize Aviation employees to do various things, but does not, by itself, authorize TAX to disclose tax information to them. Aviation regulation 24 VAC 5-20-20 directs aircraft owners to contact TAX and pay the sales and use tax before applying to Aviation to license the aircraft. TAX issues a confirmation letter upon payment of the tax, which the taxpayer may then show to Aviation as proof of payment. No disclosure is required in order to collect the tax.

### Compliance Function

Aviation has adopted a tax clearance requirement for aircraft licensure. TAX recently studied the potential impact of adopting a tax clearance requirement for a variety of professional and other licenses issued by the Commonwealth. Although concluding that the idea was not feasible for several reasons, the report noted that taxpayer confidentiality was a significant issue:

TAX considers the confidentiality of tax information to be vital to Virginia's reliance upon voluntary compliance by taxpayers. If we cannot maintain this confidentiality, taxpayers may become less willing to disclose information related to their income and assets, which would make it very difficult for TAX to ensure that taxpayers were fulfilling their tax obligations. Thus, exceptions to taxpayer confidentiality should be tightly controlled.

*Tax Clearance Study*, Senate Document No. 7 (2008)

If TAX decided to enhance their compliance audits with regards to the collection of sales and use tax on aircraft, TAX can obtain the licensing information from Aviation. See § 58.1-3 E. Therefore, from a compliance perspective it is not necessary for TAX to disclose information to Aviation.

### Administrative Function

However, the administration of a tax involves far more than just issuing assessments and depositing payments. Staff has to handle telephone calls, walk-ins and letters related to the tax. Refusing to disclose information to Aviation could lead to avoidable work for TAX staff if an aircraft owner has paid the tax, but does not have a copy of the confirmation letter when applying for an aircraft license. In that case Aviation would tell the applicant to get a duplicate letter from TAX, and our staff would have to receive the request, research the accounting records to verify payment, and issue a duplicate letter. Providing Aviation with the spreadsheet would reduce such requests for TAX thereby improving the efficiency of TAX's administration of the aircraft sales and use tax.

Improving the efficiency of tax administration is part of TAX's duty. For example, *Va. Code* § 58.1-202 directs the Tax Commissioner to ascertain the best methods of reaching taxable state property, as well as measures that will promote harmony and cooperation among all officials connected with the revenue system of the Commonwealth.

*Va. Code* § 58.1-3 requires us to analyze disclosure as it relates to TAX's duties. As long as there is some benefit to tax administration consistent with TAX's duties then disclosure is authorized. The fact that disclosure may also be consistent with the duties of another agency is not relevant.

### Other Agencies

Consideration must be given to whether disclosure would be authorized if other agencies adopted tax clearance requirements similar to Aviation's that require proof of payment of one or more Virginia taxes before issuing a driver's license, a contractor's license, a license to practice law, medicine or accounting, etc. In this case a distinction must be drawn between two hypothetical situations:

- TAX asking the licensing agency to suspend or refuse to issue a license because of a delinquent tax;
- The licensing agency seeking verification of a tax payment.

In the first case disclosure would be in TAX's line of duty because it would be an action intended to assist in the collection of delinquent tax. In the second case, however, there is unlikely to be a clear link between the qualifications for a license and

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the payment of a tax. For example, a Virginia driver's license may be possessed by a person whose income is below the filing threshold for federal and Virginia income tax. The exam required to become eligible for some professional licenses is so onerous that many professionals maintain their Virginia professional license even though they live and practice their profession in another state. Because some licensees may have no Virginia tax obligations, and licensure is not statutorily linked to a tax obligation, there is no clear link between the license and a tax. Nor is there a clear link between disclosure and improved tax administration. Therefore, disclosure would not be authorized.

The link between Aviation and the aircraft sales and use tax is clear. Under Virginia law the same event, presence in the state for 60 days or more, triggers both the sales tax and the license requirement. Therefore, there is a much stronger case for coordinating the administration of aircraft sales and use tax and aircraft licensure.


Conclusion

Based on the benefit to TAX's administration of the aircraft sales and use tax, disclosure to Aviation is authorized, but it is discretionary, not mandated. TAX retains the right to refuse to disclose the information if, in its discretion, the benefit to tax administration is not of sufficient magnitude to justify disclosure. Moreover, TAX still has the duty to ensure that the recipient of the information will protect the confidentiality of the information, as required by Va. Code § 58.1-3 C. Concerns about the security of the information in the hands of another agency would justify refusing to disclose tax information even if disclosure would be authorized under the line of duty exception.

Recommendation

TAX shall disclose to the Department of Aviation such information relating to the payment of aircraft sales and use tax as TAX deems necessary to coordinate the licensure of aircraft with the payment of tax. Disclosure shall be conditioned upon assurance that the Department of Aviation will preserve the confidentiality of such information from further disclosure. At a minimum, information provided to Aviation shall include a notation that the document contains confidential tax information protected from further disclosure by Va. Code § 58.1-3.

Agreed:

  
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Craig M. Burns  
Acting Tax Commissioner

  
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Date